



FACSIMILE COVER SHEET
PTO GROUP 1200

Fax Number (703) 308-4556

FROM: Richard Fisher
ART UNIT: Group 1200
SERIAL NO: 08/154,562

TO: Mr Cipollone
COMPANY: _____
FAX NUMBER: 201-816-1909
OF PAGES: 3

(including this page)

IF YOU DO NOT RECEIVE A LEGIBLE COPY OR IF YOU DO NOT
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RECEPTIONIST AT (703) 308-1235.

MY TELEPHONE NUMBER IS (703) 308-0193

THANK YOU.

*This fax is per our telephone conversation
of 2-14-96.*


UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

 Address: COMMISSIONER OF PATENTS AND TRADEMARKS
 Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

05/154,537 11/19/95 FUGEL

 ANTHONY D. DIPOLLONE, ESQ.
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1242/1102

EXAMINER	
BARTS, S	
ART UNIT	PAPER NUMBER
	9

DATE MAILED:

11/02/95

INFORMALITY RE PAYMENT OF FEE
 The informality regarding the payment of the fee in connection with ☐ the original filing fee ☒ the amendment filed July 13, 1995 is indicated below.
A. FEE DUE

- ☐ The amendment is considered incomplete in that the funds in Deposit Account No. _____ are insufficient to cover the entire fee due. The balance is due within the period set below.
- ☐ The amendment is considered an incomplete response, in that payment of \$ _____ is insufficient to cover the claims as shown in the attached Patent Application Fee Determination Record. Remittance is due within the period set below.
- ☐ The amendment has not been entered, since applicant has failed to remit (or authorize charge to a Deposit Account) the fee as indicated on the attached Patent Application Fee Determination Record. Remittance or authorization is due within the period set below.

- ☐ The filing fee of \$ _____ submitted in this application is insufficient.

 A balance of \$ 44.00 is due for additional claims.

- ☐

 APPLICANT IS GIVEN THE REMAINDER OF THE SET PERIOD FOR RESPONSE,
 OR ONE (1) MONTH FROM THE DATE OF THIS LETTER, WHICHEVER IS LONGER,
 WITHIN WHICH TO REMIT THE FEE OF \$ 44.00.
B. EXCESS PAYMENT:

- ☐ It is noted that payment of \$ _____ is in excess of the amount necessary to cover the claims now in the application. See the attached Patent Application Fee Determination Record.

This matter of refund or credit to your account is being referred to the Finance Officer, for his consideration.

 CLERK OF GROUP

OFFICIAL GAZETTE NOTICE

Withdrawing the Holding of Abandonment
When Office Actions Are Not Received

The purpose of this notice is to announce a practice that will minimize costs and burdens to the practitioner and the Office when an application has become abandoned due to a failure to receive an Office action.

A petition to withdraw the holding of abandonment in accordance with Delgar Inc. v. Schuyler, 172 USPQ 513 (D.D.C. 1971) is burdensome to the practitioner since the practitioner must overcome a strong presumption that an Office action duly addressed and indicated as mailed was timely delivered to the addressee. To overcome this presumption, a practitioner is currently required to submit a persuasive showing that would permit the Office to conclude that the Office action was not received. Accordingly, evidence which is typically required includes: copies of records which would disclose the receipt of other correspondence mailed from the Patent and Trademark Office on or about the mail date of the non-received Office action, but fail to disclose receipt of the Office action mailed that date; copies of records on which the Office action would have been entered had it been received (e.g., a copy of the outside of the file jacket maintained by the practitioner); and verified statements from persons who would have handled the Office action (e.g., mail clerks, docket clerks, secretary, etc.).

In order to minimize costs and burdens to the practitioner and the Office when an application has become abandoned due to a failure to receive an Office action, the Office is modifying the showing required to make a petition to withdraw the holding of abandonment grantable. The showing required to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail, e.g., if the practitioner has a history of not receiving Office actions. Two additional procedures are available for reviving an application that has become abandoned due a failure to respond to an Office Action:

- (1) a petition based on unintentional abandonment or delay; and
- (2) a petition based on unavoidable delay. See Manual of Patent Examining Procedure § 711.03(c).

C.E. Van Horn

Charles E. Van Horn
Patent Policy and Projects Administrator
Office of the Assistant Commissioner for Patents

25 October 1993
(Date)